

JOHN D. DINGELL
12TH DISTRICT, MICHIGAN
COMMITTEE ON
ENERGY AND COMMERCE
CO-CHAIR
HOUSE GREAT LAKES
TASK FORCE
MEMBER
MIGRATORY BIRD
CONSERVATION COMMISSION

Congress of the United States
House of Representatives
Washington, DC 20515-2215
June 4, 2013

WASHINGTON OFFICE:
ROOM 2328
RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2215
(202) 225-4071
DISTRICT OFFICES:
19855 WEST OUTER DRIVE
SUITE 103-E
DEARBORN, MI 48124
(313) 278-2936
301 WEST MICHIGAN AVENUE
SUITE 400
YPSILANTI, MI 48197
(734) 481-1100

The Honorable Mignon Clyburn
Acting Chairwoman
U.S. Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

0572

Dear Acting Chairwoman Clyburn:

Congratulations on your appointment as interim chair of the Federal Communications Commission. I wish you every success and look forward to working with you in order to move the Commission's work forward in a productive manner consistent with its statutory obligations.

As I am sure you are aware, the Commission's implementation of the Middle Class Tax Relief and Job Creation Act of 2012 ("the Act") is of particular interest to me. I believe it is in the country's best interest that the Commission successfully design and execute reverse and forward auctions of broadcast frequencies in order to facilitate the timely buildout of FirstNet, the newly-created nationwide interoperable public safety broadband network, and expand access to mobile broadband. At the same time, I believe the Commission should adhere to congressional intent and its mandate under law when doing so. I am concerned that the Commission may be acting or planning to act beyond such mandate in implementing the Act. Accordingly, I respectfully request your responses to the following questions:

1. Section 6403(b)(1) of the Act specifies that the Commission may, subject to international coordination along the border with Mexico and Canada, reassign and reallocate broadcast frequencies. At the December 1, 2011, Energy and Commerce Subcommittee on Communications and Technology markup of the Act, I asked counsel if section 6403(b)(1) requires the Commission to complete coordination with Mexico and Canada before reassigning and reallocating broadcast frequencies, to which counsel replied in the affirmative. Further, the Commission indicated in its April 22, 2013, response to a March 28, 2013, Michigan Congressional Delegation letter of inquiry that with respect to the "Commission's existing duty to coordinate with Canada and Mexico, [it] will comply with the [Act's] requirements." Does the Commission believe it must complete international coordination with Mexico and Canada prior to reallocating and reassigning broadcast frequencies? If not, which provisions in the Act grant the Commission discretion in this regard? Please explain your responses.
2. In its aforementioned April 22, 2013, response, the Commission indicates that "one of the first areas where the United States will reach initial understanding with its Canadian and

Mexican counterparts will concern the methodologies to be used for interference scenarios for television and future wireless services.” To that end, the Commission issued a Notice for Comment on February 4, 2013, to revise its Office of Engineering and Technology Bulletin No. 69 (OET-69), a model used to predict broadcast interference. Does the Commission believe the Act grants it authority to revise OET-69? If so, please indicate the specific provisions in the Act from which the Commission draws such authority and explain the Commission’s reasoning.

3. I understand that the Commission is considering a methodology for “scoring” bids by reverse auction participants based on factors “in addition to bid amount, such as population coverage or geographic contour, or other relevant measurable factors” (*see*: FCC 12-118, pp. 145-56). Does the Commission believe sections 6402 and 6403 of the Act permit it to conduct a weighted reverse auction? Does the Commission believe any other provision of the Act grants it authority to conduct a weighted reverse auction? Finally, what effect does the Commission estimate a weighted reverse auction would have on the number of participants and amount of spectrum recovered compared to an unweighted auction? Please explain your response.

I believe the Commission’s implementation of the Act should be subject to ongoing and rigorous scrutiny in order for the Act to achieve the purpose Congress intends. To that end, please submit your responses to this inquiry **no later than the close of business on Friday, June 28, 2013**. Thank you for your kind attention to this matter. Should you have any questions, please feel free to be in touch with me or have your staff contact Andrew Woelfling in my office at 202-225-4071.

With every good wish,

Sincerely,



John D. Dingell
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION

July 2, 2013

Mignon L. Clyburn
Acting Chairwoman

The Honorable John D. Dingell
U.S. House of Representatives
2328 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Dingell:

Thank you for your kind words regarding my appointment as Acting Chairwoman. I would like to extend congratulations to you, as well, on recently attaining the distinction of becoming the longest-serving Member of Congress in history.

Like you, I am committed to implementing the provisions in the Spectrum Act as intended by Congress, and in a manner that will result in a successful auction. This is a complex undertaking, and Commission staff continues to work diligently toward final recommendations later this year.

I look forward to working with you, and appreciate the opportunity to address your questions regarding the Commission's work on incentive auctions in the attached.

Sincerely,

A handwritten signature in blue ink that reads "Mignon L. Clyburn". The signature is fluid and cursive, with the first name being the most prominent.

Mignon L. Clyburn

Enclosure

1. Section 6403(b)(1) of the Act specifies that the Commission may, subject to international coordination along the border with Mexico and Canada, reassign and reallocate broadcast frequencies. At the December 1, 2011, Energy and Commerce Subcommittee on Communications and Technology markup of the Act, I asked counsel if section 6403(b)(1) requires the Commission to complete coordination with Mexico and Canada before reassigning and reallocating broadcast frequencies, to which counsel replied in the affirmative. Further, the Commission indicated in its April 22, 2013, response to a March 28, 2013, Michigan Congressional Delegation letter of inquiry that with respect to the "Commission's existing duty to coordinate with Canada and Mexico, [it] will comply with the [Act's] requirements." Does the Commission believe it must complete international coordination with Mexico and Canada prior to reallocating and reassigning broadcast frequencies? If not, which provisions in the Act grant the Commission discretion in this regard? Please explain your responses.

Response:

International coordination is an important aspect to the implementation of the Spectrum Act incentive auction provisions. The Commission continues to work with the Department of State and our counterparts in Canada and Mexico using established coordination processes.

The Commission intends to adhere to all statutory requirements. The Spectrum Act in section 6403(b)(1) makes the reassignment and reallocation of the broadcast spectrum "subject to" international coordination. That language is identical to that used by the Commission in describing its handling of the earlier DTV transition, in which the Commission "adopt[ed] our proposed allotments for these stations, *subject to* our continuing negotiations with Canada . . . ,” notwithstanding broadcasters’ requests to the contrary. *Advanced Television Systems & Their Impact Upon the Existing Television Broadcast Service*, 22 FCC Rcd 15581 (2007) at ¶¶ 103-05 (emphasis added); *see also id.*, 13 FCC Rcd 7418 (1998) at ¶¶ 138-40. Thus, although the Commission has not yet interpreted these provisions in an Order, that precedent – where our international coordination with respect to the DTV transition continued beyond the finalization of allotments – may well be applicable to the Commission’s ultimate determination of its statutory authority under the Spectrum Act.

In the end, I expect the consultations related to the Spectrum Act will ultimately lead to a better-designed and more successful incentive auction, and will create opportunities for greater spectrum efficiency and band harmonization across North America.

2. In its aforementioned April 22, 2013, response, the Commission indicates that "one of the first areas where the United States will reach initial understanding with its Canadian and Mexican counterparts will concern the methodologies to be used for interference scenarios for television and future wireless services." To that end, the Commission issued a Notice for Comment on February 4, 2013, to revise its Office of Engineering and Technology Bulletin No. 69 (OET-69), a model used to predict broadcast interference. Does the Commission believe the Act grants it authority to revise OET -69? If so, please indicate the specific provisions in the Act from which the Commission draws such authority and explain the Commission's reasoning.

Response:

The Spectrum Act requires the Commission to use “the methodology described in OET Bulletin 69” in the repacking. The Commission is committed to adhering to that statutory requirement. The Public Notice you mention invited comment on use of updated computer software and input values for applying the methodology OET-69 describes, in order to facilitate the incentive auction and carry out Congress’s mandate to seek to preserve each broadcast station’s coverage area and population served as of the date of the Spectrum Act’s enactment. The Public Notice also indicated that the use of outdated Census data (the DTV Table of Allotments was calculated using 1990 Census data) might not preserve TV service as of the date of enactment of the Spectrum Act, as required by the statute, given that the most recent population data from the 2010 U.S. Census reflects significant population increases and changes in population distribution over time.

In response to the Public Notice, NAB and others have argued that use of updated software and inputs would violate the Spectrum Act by altering “the methodology described in OET Bulletin 69.” Others, however, maintain that the statute’s reference to a “methodology” does not prevent the Commission from updating the computer code or input values used to apply the methodology in particular cases. The Commission will carefully review the arguments and evidence in the record and ensure that it is adhering to all relevant statutory requirements before reaching a decision on this issue in the incentive auctions proceeding.

3. I understand that the Commission is considering a methodology for "scoring" bids by reverse auction participants based on factors "in addition to bid amount, such as population coverage or geographic contour, or other relevant measurable factors" (*see*: FCC 12-118, pp. 145-56). Does the Commission believe sections 6402 and 6403 of the Act permit it to conduct a weighted reverse auction? Does the Commission believe any other provision of the Act grants it authority to conduct a weighted reverse auction? Finally, what effect does the Commission estimate a weighted reverse auction would have on the number of participants and amount of spectrum recovered compared to an unweighted auction? Please explain your response.

Response:

Sections 6402 and 6403 of the Spectrum Act include specific instructions about how the Commission should implement incentive auctions, such as the requirement of at least two competing licensees participating in the reverse auction. They do not, however, specify any criteria with respect to the design of the reverse auction.

Additionally, Section 6003 of the Spectrum Act provides the Commission with authority to implement those provisions of the Act that lie within its responsibility (which include Sections 6402 and 6403) “as if [they are] a part of the Communications Act of 1934,” whose provisions grant the Commission broad authority to promulgate rules necessary to carry out the objectives of the statute. That provision is also consistent with the Commission’s authority under subsection 309(j) of the Communications Act of 1934, in designing auctions, to “include safeguards to protect the public interest in the use of the

spectrum” and to promote various statutory objectives. Section 6402 is codified as a part of subsection 309(j). *See* 47 U.S.C. § 309(j)(8)(G).

Given that the incentive auction is an entirely new and complex endeavor, within the scope of its statutory authority, it will serve the public interest for the Commission to explore all reasonable concepts in auction design that may promote the achievement of the Spectrum Act’s goals – and the idea of scoring bids is one proposal raised in the *Incentive Auction Notice of Proposed Rulemaking*. We sought comment on the concept, and the record is under review. There have not been any final recommendations on this issue, so it would be impossible to speculate on any potential impact. Of course, pursuant to Section 6402, the Commission will notify the appropriate committees of Congress (including the House Committee on Energy and Commerce) at least three months before the incentive auction of the methodology for calculating the amounts that will be shared with reverse auction participants. *See* 47 U.S.C. § 309(j)(8)(G)(iv).